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OF

THE JUDGE-ADVOCATE

AND OF

MR. R. T. MERRICK,

PRIVATE COUNSEL FOR GEN. HAZEN,

IN THE

STANLEY TRIAL.

NEW YORK:

S. W. GREEN'S TYPE-SETTING MACHINES, 18 JACOB STREET.

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I DEEM it due to myself to lay before the officers of the Army and the public the arguments of Judge Advocate Swain, and my own counsel, Mr. Richard T. Merrick, submitted to the General Court Martial, which was convened at Governor's Island on the 8th of April last, for the trial of Gen. D. S. Stanley on charges preferred by me.

W. B. HAZEN.

ARGUMENT OF JUDGE ADVOCATE SWAINE ON THE ADMISSION OF EVIDENCE IN REBUTTAL.

All the testimony cf the defence having been submitted, evidence in rebuttal was offered by the prosecution. The Judge Advocate being met by an objection in behalf of the accused, he read to the court the following argument as to the scope of the testimony thus to be offered :

Heretofore the court has decided not to receive testimony, contemplated to be procured, showing the general good character of the prosecutor for gallantry in action, his truthfulness and honesty. These traits have been seriously assailed by the defence, both in argument and by the testimony introduced by it, showing, or tending to show, that the conduct of the prosecutor at Shiloh and Pickett's Mills was not in accordance with duty in those important battles ; that he claimed or assumed honors that he was not entitled to. In other words, the defence claimed at the outset that the prosecutor acted in a cowardly or disgraceful manner at those places, and claimed trophies by capture that did not justly belong to him, and asserted that the truth would be shown, but later denied that it was necessary that the truth should be shown, and asserted that it was sufficient to show only that Colonel Stanley believed the charges were true. Had the defence in the beginning simply confined itself to the claim latterly made, and aban-

doned all claims as to ability to show the truth of the libellous imputations by independent evidence, outside of the beliefs of the accused, the struggles of the defence for the past eight days would have been obviated, and the fact that Colonel Stanley believed these things himself, without pretence or claim that they were true, would have been admitted by the Government. It is now too late for the accused to recede from his original position, after heaping upon the record every character of evidence tending to prove and establish the imputations contained in the libellous writings.

The case being thus briefly stated, what are the issues growing out of it ? They are as follows : First—Writing and publishing, and aiding and abetting in the writing and publishing, of defamatory writings. Second—The truth of the defamatory imputations contained in these writings. The prosecution thus far has offered evidence only in proof of the publication and aiding and abetting in the publication of the defamatory writings set out in the several specifications to the charges, which, in connection with the admissions of the accused, are believed to be now fully established before the Court. Upon this issue alone the prosecution has been heard. Upon the second branch of the proposition it has not been heard. The defence was proclaimed to be that the libellous imputations were true. Near the close of the defence, being fearful possibly that the truth was not established to the satisfaction of the Court, counsel, speaking for the accused, says : “ You must recollect that it is no part of the accused’s case that these charges were true. We propose to prove that these charges were correct, and uttered by General Stanley in good faith.” And how could he utter in good faith what was not true ?

The shifting resorted to by the defence in this case is astonishing, and after an elaborate and painful effort on the part of the defence to prove the libellous imputations, it now seeks to shut the mouth of the prosecution and prevent it from replying ; and that, too, contrary to the principle of law stated by the defence itself, that in cases where a prisoner in his defence has introduced new matter, the true rule is that the prosecution has a right, after the prisoner has gone through his evidence, to call witnesses for the purpose of disputing any part

of the prisoner's case which could not have been anticipated by the prosecutor in the first instance. That is the rule both in civil and military courts.

The entire subject of the defence is new matter not adverted to by the prosecution, and it was impossible, even had it been necessary, in the first instance, for the prosecution to anticipate by its evidence what character of proofs the defence would adduce tending to show the manner in which the conduct of the defamed party was disgraceful at Shiloh and Pickett's Mills, and in what manner he stood convicted before those who heard him testify, and in what sense he was pursuing a career of imposture. The Court will notice the fact that the testimony of the defence tending to show these things was so varied that ordinary foresight could not anticipate it. From the nature of the case, therefore, the end of the defence could not be anticipated by the prosecution, and the case of the defence must first be developed by it before it could be met by the other side.

This is in strict accordance with the rules of law quoted in Greenleaf, in his work on Evidence, volume 2, section 429, with reference to this question. He states the rule briefly as follows : "The usual course is to prove a libel and leave it to the defence to make out his justification, after which the plaintiff offers all his evidence rebutting the defence." After hearing the prosecution in reply to the new matter set up by the defence, the court can base no judgment thereon ; and all its labor since the defence began has been simply a vain task, calculated only to further stigmatize the object of the defamatory writings by adding thereto the injurious statements, impressions, and opinions contained in the evidence of the defence, published and spread broadcast in the public prints of the country.

In reply to the new matter presented by the defence, therefore, the prosecution proposes to introduce evidence showing that General Hazen at Shiloh commanded his brigade from daylight until 12 meridian, throughout the entire charge made at that time, during which all its casualties occurred, amounting to one fifth of the entire casualties of Buell's army, while it comprised but one tenth of its number, and that this brigade

was then scattered, many of its members lost in a thick wood and dense undergrowth, among whom was its commander ; that he was then absent until he joined it in the afternoon between three and five o'clock ; that his absence was not improper ; that there was no concealment about it ; that he at once reported and explained it himself to both General Nelson and General Buell, after which they commended him in high and flattering terms in the battle ; that at Stone River his brigade and other troops sent by his division commander to him and commanded by himself did fight and hold from ten A.M., just before the fighting reached that point, until withdrawn at four A.M. next morning, the ground where the monument stands, and all the front portion of the Round Forest ; that no other general officer did personally command that portion of the line for any of the period of the great battle ; and that in its accomplishment and great results it stands as one of the greatest achievements of the war of the rebellion ; that at Mission Ridge every word in the Lossing letter will be fully proven ; that his command did reach the crest of the ridge while at least a large portion of General Sheridan's troops were but half way up, and that the guns were legitimate captures—but whether so or not, General Hazen had no part in collecting them, either directly or indirectly ; that at Pickett's Mills Hazen was with the front line and in his proper place, doing his duty in an exceptionally proper manner until his brigade fell back ; that the series of letters written to and received from General Garfield will show clearly that General Hazen did not volunteer to testify about post-trader-ships, but upon an entirely different subject ; that he substantially so stated before being told, and was assured by, as he supposed, competent authority that his name was not to be made public in that connection, and that his action was entirely proper ; that of the Fort Rice difficulty, General Stanley, by telling but a part of the affair, suppressing his retraction, has created an impression which a full knowledge of the facts would not in any manner support ; that by a voluntary agreement made with General Hazen at the time, and reiterated and confirmed by a letter written without condition at Fort Sully in March, 1873, subsequent to the Opdycke letter,

General Stanley agreed to cease assailing and criticising General Hazen, which agreement he has been engaged in violating ever since ; that it can be shown conclusively that General Stanley, by constant repetition and circulation, is the prime author of the stories he said were true (but later says that he only believes them to be true) and of common report.

Ample and complete testimony to establish the foregoing facts is now present. Every principle of justice and right demands that the prosecution ought to be permitted to introduce the evidence just stated in rebuttal in the case of the defence. The determination of the truth of grounds of belief, of the truth of the imputations set up in justification in this case, is a question of fact, in the ascertainment of which the parties affirming as well as the parties denying the existence of the same ought to be heard, and especially is this so since the court has undertaken to enter into an investigation at all.

It has been insisted that the person injured by the libel may seek redress through a court of inquiry. What mode has he to obtain redress after the damaging testimony presented to this court and published to the reading world ? Could a court of inquiry redress that ? Does this court want its proceedings reviewed by a court of inquiry ? The very statement of the case shows the utter absurdity of the claims of the defence. Now while in the first instance a court of inquiry might have been proper had General Stanley confined his charges to official channels before his publishing them to the world, the case now calls for the operation of another branch of the machinery of the administration of remedial justice in the Army.

An extended reply was made by counsel for the accused, after which the court deliberated with closed doors upon the points raised. On the reopening of the doors, the following decision was announced : “ For the purpose of correcting statements of incidents or facts in the testimony presented by the accused, competent testimony which might have been accessible to accused may be introduced, provided it is confined strictly to the matters alleged in the specifications.”

ARGUMENT OF THE JUDGE ADVOCATE.

Mr. President and Gentlemen of the Court:

Colonel Stanley is charged with, first, conduct unbecoming an officer and a gentleman, supported by twelve specifications, as follows :

The first and second specifications allege that Colonel Stanley wrote and addressed to General Hazen the letter therein specified. This letter clearly on the face of it imputes toward Colonel Hazen what is divided and separately alleged in the third, fourth, and fifth specifications to this charge—that Colonel Hazen was guilty of perjury while testifying before the Senate sitting as a court of impeachment in the trial of the Hon. W. W. Belknap ; that his conduct was disgraceful at the battle of Shiloh, and that he was pursuing the career of an impostor. The sixth specification sets forth the series of charges preferred by General Stanley against General Hazen.

The seventh, eighth, ninth, tenth, and eleventh specifications embody the same letter, or parts thereof, with the additional allegations in specifications seventh, eighth, ninth, and tenth that he caused to be published, and aided and abetted in publishing the said letter in the St. Paul *Pioneer Press*, and in the eleventh specification that he furnished for publication in said newspaper the same letter. This letter, however, as published in the St. Paul *Pioneer Press*, varies from the letter addressed to General Hazen at Vienna only in the addition of the words, “and your shameful exit from your command at Fort Buford.”

The twelfth specification alleges that General Stanley caused and allowed to be published in the New York *Times* the article in the issue of that paper of the 14th of March wherein Colonel Hazen is directly accused of perjury and cowardice.

The second charge is conduct to the prejudice of good order and military discipline, supported by three specifications set-

ting forth that he furnished for publication and procured and allowed to be published in the St. Paul *Pioneer Press* the letter specified in the eleventh specification, first charge, and the article quoted from the New York *Times*, set out in the twelfth specification, first charge. The defamatory writings were thus elaborately extended to meet every possible view in which the court might consider them, and for convenience in its findings. It will be seen that each specification to the charge describes an offence known in the law as a libel, the punishment for which in every State of the Union is fine and imprisonment.

Time and again the defence in this case has asserted that the offences under trial are not libels, but were simply the undefined military charge of conduct unbecoming an officer and a gentleman ; that there can be no such offence as libel before a military court.

Argument is hardly necessary to show the error of these views. The 61st Article of War provides that "Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service." This article of itself describes no offence, but only the penalty that shall be adjudged upon conviction of conduct that shall be found by the court unbecoming the officer and the gentleman. But what combination of facts shall constitute such conduct on the part of an officer ? Plainly it must be something which the law denounces as wrongful or criminal, which in the judgment of the court, when committed by an officer, would render him an unfit person to retain a commission : hence the everyday practice under this article is that it must be supported by a specification or specifications showing the commission of some crime or offence by the offending officer.

The article under which the second charge is laid describes no offence, and we must therefore resort to the ordinary rules of law in the ascertainment of the conduct contemplated by its provisions. Clearly a libel will satisfy the requirements of either charge, being "any writings, pictures, or other signs which immediately tend to injure the character of an individual or to occasion mischief to the public." It must be with reference to this offence that O'Brien in his

work on Military Law, at page 110, uses the following language : " Is an officer injured or insulted, the commanding officer, the guardian of his honor, will require the offender to make a prompt and ample apology. Is the offence more serious, a court-martial under the 99th Article of War will, in addition to such apology, vindicate the honor of the service by its censure and punishment. Is the injury of such aggravated nature as to show the offender lost to all proper feelings, a court-martial under the 83d Article will ignominiously expel him from a society with which he is no longer fit to associate, as having lost the characteristics of an officer and a gentleman." This language aptly applies in this case. An officer is grievously injured and insulted by the libellous imputations of the accused. He wholly declined to offer an apology for the wrongs and injuries done when invited to do so, but confidently asserts that his libels are true and that he believed them true. If then the court should believe that the libels were not true, and, therefore, the accused not having any good grounds to so believe them, the court should adopt the doctrine so plainly enunciated by O'Brien as the correct principle of law in the determination of this case.

In his plea to the first and second specifications, first charge, General Stanley admits the writing and addressing of the letter to General Hazen as alleged. In his letter in evidence (Record, pp. 66, 67, 68, 69, and 70) he says : " I have not a copy of my letter at present with me, but from recollection I accept this as my letter. The same letter, or quotations, from it repeated thirteen times in the specifications following, I accept and acknowledge the same in all the specifications. In explanation of that letter I will say I have in good faith preferred charges against General Hazen, and he escaped trial under those charges. I wrote the letter to upbraid him, and, as the letter says, to warn him. I did inadvertently allow certain persons to see the letter and take a copy, and perhaps I furnished a copy. At any rate I was responsible that the letter got into the newspapers." Upon the introduction of this letter, however, Colonel Stanley denied that the charges referred to therein were the same here on trial (Record, p. 70), but he afterwards admitted that the charges contained in Exhibit A were the

charges referred to in that letter (Record, pp. 86, 94, 101, 118). In the charges contained in this exhibit it will be seen that this letter is set out with all the allegations of the manner and forms of publication that are contained in the charges now under trial. As to the publication of the defamatory article in the New York *Times* we have the testimony of Mr. Hosmer, who testifies that he was sent to General Stanley in his capacity as reporter for that paper; that General Stanley knew he was such, and deliberately gave him for publication (the reporter taking the same in longhand in his presence), the defamatory statements and imputations contained in that article. This witness also testified that Stanley used the very language contained in that article—namely, “He will meet charges of perjury and cowardice which I have made to his face, to the newspapers, and in official statements.” This record shows that all these things have been done, and an extract from the St. Paul *Pioneer Press* in evidence shows that his libellous imputations at least got into that paper, and General Stanley so admitted. But in the utterance of the defamatory charges he did not rest with giving them publicity in official statements and to the newspapers, as he told the reporter, but he circulated and spread them orally upon nearly every conceivable occasion. He informed Colonel McCook that he told General Hazen at General Crittenden’s table at Fort Rice that he was not only a coward but a liar (Record, p. 231). General Wood also testifies that General Stanley informed him that he called General Hazen a liar and a coward—that he denounced General Hazen as a liar and a coward, and witness don’t know but he added the word “impostor” (Record, pp. 280, 281). Steele testified that Stanley said that he had a difficulty with General Hazen at some point in the West, and that he told General Hazen he was a liar and a coward, and that he ran away from his command at Shiloh (Record, p. 456). General Belknap testifies that copies of the libellous writings were sent to him by General Stanley, and that he distributed the same to certain officers in the city of Washington (Record, pp. 560, 565, 566, 567, 573). General Stanley claims that all this was done in good faith and without malice, because he believed that the libels were true.

The malice of General Stanley in this case consists in his intention to effect the particular mischief shown by the writings, which by their very terms tend to scandalize, degrade, and injure General Hazen ; and where an act is voluntary, injurious in its tendency, and illegal in its quality, it would be contrary to all legal principle and analogy to justify or excuse himself that he offended against the law with pure and upright motives. Malice in this case, from the nature of the writings, is simply an inference of law which General Stanley might have explained had he so desired. He did not do so, however, but the testimony of his own witnesses shows conclusively that his temper and disposition indicated toward General Hazen spite and ill-will in the largest sense of these terms. Except as to the statements of counsel, the malice shown by the writings and by the evidence remains wholly unexplained.

The defence rested solely on the ground that the libels were true, and that General Stanley in good faith believed them to be true, and to show the truth of the libels he introduced testimony tending to show that General Hazen ran away from his command or voluntarily and in violation of duty separated himself therefrom at the battle of Shiloh ; that he did the same at Pickett's Mills ; that he caused to be erected on the field of Stone River a monument to commemorate the achievements of his brigade at a point in the field on which his brigade was not engaged with the enemy and suffered no losses ; that he claimed trophies by capture at the storming of Missionary Ridge, which justly belonged to the division of General Sheridan ; that he was guilty of either perjury or falsehood in his testimony before the Senate of the United States, sitting as a court of impeachment in the Belknap trial,—respecting the reasons he assigned for the issuance of a subpoena to appear and testify before the Military Committee of the House of Representatives in 1872 ; that he falsely accused the Subsistence Department of opposing the execution of the law of 1866, respecting the furnishing of sutlers' supplies by that department ; that the Commissary-General interposed a barrier to the execution of that law.

As tending to show the truth of his accusations of misconduct at Shiloh, he introduced the testimony of a number of

witnesses : Colonel Crittenden testified that he was informed that General Hazen was back at the landing while the battle was going on, and that he heard a great many insinuations that General Hazen was not in his proper place (p. 110), but not that he ran away (p. 112) ; Colonel McCook testified that he saw Colonel Hazen on foot, and that he informed him that he had lost his brigade ; General Wood that he saw him near the bank of the river (pp. 240, 266). Dr. Murray says he saw General Hazen a mile from the river at Shiloh ; that he said his brigade was cut to pieces, and exclaimed that he was a ruined man ; that "they are all scattered and I don't know where they are" (pp. 344, 345), but at this time the firing did not indicate a general engagement (p. 346).

There is no doubt but that General Hazen became separated from his brigade on this day, and the prosecution admitted that fact. The only point in this connection is, did he leave in such manner as to render his conduct either wrongful or disgraceful ? Many of the witnesses testify that, from early morning until about noon, General Hazen was present in command of his brigade ; that up to this point the brigade maintained its part with bravery and gallantry in its advance upon the positions of the enemy, but suddenly meeting a superior force of the enemy in its front and flank, it broke and fled in disorder ; that parts of the country, if not most of it, were dense thickets, and that in this condition of things General Hazen became unavoidably lost in the woods, and was compelled to go to the landing in order to ascertain the position of his brigade. But the manner in which he became separated from his brigade is best given in his own testimony, "which is contradicted by none, and is corroborated by at least two of the witnesses. He says : "I went forward with the command in its charge and during its fight, and when it was repulsed I moved back with it, endeavoring to rally the men as best I could for about half a mile, when I came to a field where most of the men got over and crossed. Lieutenant Beebe, my aide, who was by my side, leaped that fence, where it was partially broken down, with his horse ; I dare not try it, fearing he would fall from his lameness [the witness had previously testified, " It was the first battle I had been in, and I found my horses entirely unmanageable

under fire ; I had to send them to the rear and dismount a bugler and take his horse, which proved to be a very unfit horse for the service "]. I turned to the left and passed around to the left of the field. There were many men of the command who did the same. In doing that I passed into a very dense thick wood, just to the left of it, and did not again get the proper direction. After being in the wood for some time with many of the men of my command, I became entirely bewildered in regard to the direction. There was no firing on this part of the line at that time ; there was firing to the left and firing to the right. I mistook the firing at the right for the firing of my own command, and moved in that direction until I found General Rousseau's brigade, at some point on the map, I can hardly tell where, and I found there General King, who was then Major King—John H. King. He told me where he thought the brigade was. I was then in company with Captain Opdycke, now General Opdycke. I endeavored to get back to where I supposed the brigade had been, but became bewildered in the woods as I had been before. I then thought it best to take one of the roads ; there were a great many roads there, the whole country was filled with roads ; they all converged in one direction to the landing ; there were no crossroads ; I supposed the landing was very near ; I thought I would get on one of these roads to the landing and get on the Hamburg road, the only one I was familiar with at the time. . . . In moving back, in place of being near the landing, I was a long ways from the landing.

"I met Dr. Murray when I had reached perhaps half the distance or two thirds of it. . . . The first people I met at the landing were the servants of my own brigade, and they offered me something to eat. I had eaten nothing for over 24 hours, and I was very much exhausted and broken down. . . . I was in all perhaps twenty minutes or half an hour. I then mounted my horse, and moved out and joined my brigade. I found General Nelson and reported every fact." The witness is confirmed in this statement by the witnesses Opdycke and Beebe—Opdycke as to the circumstance of being lost in the wood and inability to find the brigade or its whereabouts at the

time ; and Mr. Beebe as to the particular manner in which General Hazen became separated from his brigade.

The testimony of General Opdycke, and of Messrs. Beebe and Kimberly, who were attending General Hazen at the time, should be received with the highest consideration. These gentlemen testify that the conduct of General Hazen in handling his brigade from early morning up to and including the time of the charge, when the brigade became scattered and broken, was intrepid, cool, and courageous. These traits, however, can hardly be said to be assailed by the defence at Shiloh, but it confined itself to showing that General Hazen was seen away from the presence of the brigade merely. Now as to the probable time the charge took place, nearly all the witnesses think that it took place in the forenoon, and that the brigade became scattered about noon, or shortly after. Colonel McCook says that he saw General Hazen in rear of his division at twelve o'clock M., about two and a half or three miles from the landing, inquiring where he could find his brigade ; General Wood, that he saw him at the landing about one c'clock ; Dr. Murray and Mr. Bush, about noon. General Opdycke testifies that the charge was made about eleven o'clock, General Hazen being present on the line at the time, and broke the enemy's line all to pieces ; that some time after the brigade in its turn was assailed by the enemy and driven back in disorder and in a complete state of disorganization. Kimberly says that General Hazen was with his brigade till it broke, or nearly one o'clock, and Beebe says the same thing. There is no doubt but that General Hazen remained with his brigade during the entire portion of the day in which it was in a condition to fight, and that his separation therefrom, as shown, was purely an incident not at all affecting his courage or his devotion to duty, and this incident is certainly no basis justifying the assertion that his conduct was otherwise than correct and proper. None of the witnesses testifying to their opinions and impressions, or to the opinions and impressions of others, admitted in evidence, say that the conduct of General Hazen at Shiloh was disgraceful or even wrongful, or that they heard it so criticised, but the mere incident only of his being at the landing was deemed an "un-

favorable" incident, or, as the witness Whitaker said, " You cannot keep soldiers from talking." Corroborating the testimony of General Hazen, Colonel Crittenden testified that General Hazen's division commander was fully informed of the incident, and, after being fully advised, speaks in glowing terms of the conduct of Hazen at Shiloh. Now this being so, was it necessary that General Hazen should enter into an explanation with his inferiors in rank, or with prurient gos-sipers, tale-bearers, and scandal-mongers ?

The alleged cowardice of General Hazen at Pickett's Mills is attempted to be shown by General Wood and Mr. Bowman : General Wood testifies that having had occasion to send for General Hazen, in reporting to him he approached from the rear ; Colonel Bowman that he saw General Hazen while re-tiring with his regiment passing between him and a large tree, but the witness is not to be understood as saying that Colonel Hazen was hiding behind the tree (p. 305). General Wood says that Colonel Hazen might have believed with reason that he (Wood) was farther to the rear, and therefore, in looking for him under this belief, would naturally approach him in his advanced position from that direction. I do not attach any importance to the testimony of Colonel Bowman as showing or tending to show any improper conduct on the part of Colonel Hazen at Pickett's Mills ; nor to that of General Wood ; for to draw an injurious inference therefrom against General Hazen could only redound against General Wood himself, on the ground that if General Wood had any doubts as to whether General Hazen was properly exercising the direction and com-mand of his brigade at the time, he could easily have ascer-tained the fact from the staff officer who conveyed the mes-sage to General Hazen, and from others, and inform himself fully on the subject, as it was his duty to do. It is plain that General Wood did not then believe, nor does he now believe, but that General Hazen did perform the part of a brave, courageous, and gallant commander, and General Wood so testifies (p. 274) ; and the losses of his brigade show it. This is the entire testimony of the defence justifying the libellous imputation of cowardice at Pickett's Mills, and while it does not show the truth nor even the semblance of the truth of the

slightest impropriety on the part of General Hazen at that battle, let alone the disgraceful crime imputed, and therefore no testimony in rebuttal necessary, still, as the conduct of General Hazen in this action was attempted to be untruthfully and unreasonably assailed by the defence by innuendo and argument on its part, it is proper to examine the testimony of a witness who was at the time a member of the staff of General Hazen. I refer to the testimony of Mr. Beebe (Record, p. 820), who testified that he was aide de-camp to General Hazen in that action ; that during the assault upon the enemy's works General Hazen was up along the line of his brigade, and from fifty to seventy-five yards in its rear, where, so far as the nature of the ground would permit, he could see the brigade or the larger part of it ; that a battery of the enemy on the right having opened an enfilading fire, the brigade fell back ; that General Hazen accompanied the command and re-formed it about half a mile in rear of the enemy's works ; that he was with General Hazen or near him all the time, Hazen being part of the time mounted, and part of the time on foot, and never saw him take shelter behind a tree or anything else. Witness did not see General Wood, nor know the point of the field he occupied (Record, pp. 822, 823, 824). Further evidence in corroboration of this witness was offered, but the court decided not to hear any more testimony on this subject. The conclusion is therefore irresistible that the conduct of General Hazen at Pickett's Mills was that of an energetic and gallant officer.

General Wood is the only witness who testifies respecting the claims of the defence that the monument erected at Stone River in commemoration of the valor and deeds of Hazen's brigade in that action is not erected on the position held by that brigade during the battle. General Wood testified substantially that he did not believe that Hazen's brigade fought on the present site of the monument ; that he believes this in view of the statement contained in the report of General Rosecrans, that witness's division held the ground on which this monument is erected ; his language is, "I believe I may state that General Rosencranz in his official report states that my division occupied at nightfall of the 31st the position it

held on the morning of the 31st. That being so, General Hazen's brigade could not have had any men killed where that monument stands." And in answer to the question, "Do you say positively that none of General Hazen's men fell on this ground where the monument stands, or in its immediate vicinity?" he said, "I did not say so : I gave the reasons for it" (Record, pp. 256, 278). While the uncertainty of this witness's testimony on this subject hardly demanded a reply, his grounds of belief being based upon an incidental statement contained as he says in the report of General Rosecrans, not at all necessary to the general correctness of the report itself, yet, on the other hand, we have the positive testimony of the division commander and of officers of the brigade, that the very ground upon which the monument stands was the identical ground held by Hazen's brigade during the battle of Stone River. Grouping the proofs, therefore, on this point, and in all fairness to the witnesses who testified the following conclusion is justified :

The testimony of General Wood is based upon information purely hearsay, historical, and vague beliefs respecting the location of the monument, while the testimony of General Palmer, the division commander of General Hazen, and of Messrs. Beebe and Kimberly, members of the brigade staff of General Hazen at the battle of Stone River, is direct and positive that the monument is located on the ground held by Hazen's brigade during that action.

If any further or additional evidence of malice be required in this attempt to libel not only the living before this Court, but the heroic dead of Hazen's brigade at Stone River, the accused voluntarily furnishes it in clear and unmistakable terms in his graphic description and definition of impositions and impostors. He stated before this Court, "I am accused, and one of the serious accusations against me is accusing General Hazen of being an impostor. There are several kinds of impostors. There are impostors for a day, there are impostors for a month, and there are impostors whose impositions will last to all eternity. The man who builds a monument to commemorate a falsehood is the greatest impostor that the world can possibly conceive of. We wish to show why this

monument was raised, and we want to show the imposture of it" (p. 252, Record).

If this language means anything it means that accused intended to stigmatize General Hazen as the worst and most dangerous of impostors, one who would not only deceive while living but continue his false and deceptive claims by recording them on the imperishable granite. Could this utterance of the accused have been made for any other purpose than to reiterate one of the gravest and severest of his libellous accusations to give it what additional force and effect its proclamation in this presence would add to wound the feelings and manhood of the victim of his slanders, and this, too, in the presence of overwhelming and conclusive proof that the Stone River monument is not a lie nor an imposition, but that it stands, as near as human memory can locate it, on the exact spot where the heroic men of that brigade so well fought, and many of them so bravely fell.

What motive General Stanley could have in thus libelling the ashes of the heroes sepultured at this monument is difficult of solution. At all events his proofs did not in any manner (even supposing his assertion to be true) point to General Hazen as the founder of the monument, or that he aided in founding the same.

On the Missionary Ridge battle, General Stanley introduced in evidence the report of General Sheridan, in which the following statement appears : "General Wood, in his report to General Thomas, of artillery taken, claims many pieces which were the prizes of my division, and when told by me that the report was untruthful replied that it was based upon the report of General Hazen, who, perhaps, will in turn base his on those of regiments ; but whether Wood, Hazen, regimental or company commanders are responsible, the report is untrue. Eleven of these guns were gleaned from the battlefield and appropriated while I was pushing the enemy on to Chickamauga Station." It is difficult to understand what this is intended to prove or disprove. So far as the record goes, there is nothing to show that General Hazen ever did or omitted to do anything denied or affirmed by it. Mr. Kimberly testified that Hazen's brigade reached the crest first,

driving the enemy before them and capturing several pieces of artillery ; a captured loaded piece was trained and discharged along the ridge, causing the enemy to give away on the crest in front of Sheridan's division, then advancing up the face of the ridge. Other witnesses would have been produced who would corroborate the testimony of Mr. Kimberly, but the Court decided that it had all the testimony on the point that it desired to hear. But even if Hazen's men did assist Sheridan's division in clearing the ridge in front of it, and a number of pieces of artillery were captured by Sheridan's men after ascending the ridge, there might be a question in such a case as to whether Hazen's men might not be considered joint captors with Sheridan's men. Here also I am at a loss to understand the motives of the accused in his effort to bring General Hazen into apparent antagonism with General Sheridan as assuming to claim any of the well-earned laurels of that intrepid leader.

The next point in the series of libellous imputations is, did General Hazen testify falsely on the Belknap trial ? The entire testimony pertinent to this case given by General Hazen is in substance as follows : He testified (on the Belknap trial) that his attention had been called to the subject of post-traders at Fort Sill ; that he communicated this information to the Military Committee of the House of Representatives in 1872, having been duly subpoenaed to testify before that committee ; that after the publication of the article in *The Tribune*, Mr. Belknap made no inquiry regarding the truth of the statements contained in that article ; that his relations with Mr. Belknap up to February, 1872, were friendly ; that he had met Mr. Belknap in Washington ; that his communications were respecting post-traders generally, but on the same subject at Fort Sill particularly ; that he came before the committee in 1872 on subpoena ; that he proposed to give information on post-traders to General Garfield before being subpoenaed ; that he was called primarily to testify concerning French and German staff organizations, and the subject of post-traders he considered as pertaining to the same thing ; that he wrote to the Secretary of War, through the regular channels, about the farming out of post-trader-

ships ; that it was his duty to do so. During cross-examination on this testimony the letter written to the Secretary of War, of September 12th, 1875, was introduced in evidence. In that letter General Hazen says : " Soon after, when Mr. Coburn was chairman of the committee, I was summoned to Washington to give evidence upon staff organization of the French and German armies. After finishing upon these subjects I was questioned upon the subject of post-traders. I at first remonstrated on the ground that I had not reported the matter to you, because I believed the Commissary Department would defeat any action in that direction, and that my testimony might be a courtesy to the Secretary." During the remainder of the cross-examination of the witness this day, he clung to the belief that he had written to the Secretary of War through the Adjutant-General regarding post-traders *before* he had testified before the committee in 1872, but did not know that it had reached the Secretary, as he received no reply. Next day, upon reflection, General Hazen appeared before the Senate to correct his testimony given the previous day, and testified as follows : " Upon consideration, I find that the letter which I referred to, the official letter which I said was reported to the War Department for General Belknap's information with regard to post-traders was written at Fort Buford, and not at Fort Hays, and that would make it *after* I testified to the House Committee, and not *before* it. So that I wish to change my testimony in that respect. It was written *after* and not *before*, as I supposed yesterday." General Hazen further testified on this occasion that he wrote but two letters to Secretary Belknap on the subject, namely, the letter of September 12th, 1875, directly and marked confidential, and the letter he had testified to as having written *after* he had testified before the House Committee. This last-mentioned letter he sent through the regular channels, and his testimony on the first day's examination shows it, but upon appearing to correct his testimony Mr. Carpenter assumed that the letter was sent direct to the Secretary, and confined the witness to " Yes" or " No" whether it was so or not. It was this bullying of counsel that confused the witness, and no doubt created the unfavorable impression testified to here. It

is not unusual for witnesses after refreshing their memories to return and correct their testimony, and that was all General Hazen has been guilty of in this instance. His testimony, as a whole, is perfectly consistent and truthful.

The statement contained in General Hazen's letter of September 12th, 1875—"I have tried before to get this matter before you, but it meets its usual barrier in the office of the Commissary-General. I enclose you a case of it. The law referred to in that letter was a mandatory one of perfectly plain construction, one in which the troops on the frontier are interested to the extent of about two millions of dollars annually, and the construction referred to in that letter is not understood either in fact or in justice, only that it has been opposed from the first by the department whose duty it was to carry it out"—is not a falsehood. General Hazen had a right to so construe the action of the Commissary Department. It is notorious and in evidence that the law requiring the Commissary Department to keep such articles for sale to officers and enlisted men as might be designated by the Inspector-General has not been enforced. That law was enacted immediately upon the passage of the law abolishing sutlers, and its evident intent was that the Commissary Department should supply the articles theretofore supplied by sutlers. The Commissary Department has never executed the law, but has interposed the barrier to its execution that no adequate appropriation was available for the purpose, yet it is shown in evidence that the very year in which it was to go into operation a large surplus of commissary funds available for the purpose was in the treasury. General Hazen, therefore, had a right to believe as he did, and I presume every officer on this Court will believe with him that his strictures on the Commissary Department in this respect were justly merited. General Hazen testified in the Belknap impeachment case, "I proposed to give information in regard to post-traders before I was subpoenaed ;" and further on he testified, "I wish also to say with regard to my testimony before the Military Committee four years ago, that I was called there principally, as stated in that letter, to testify with regard to the French and German staff organizations, and the other [the

post-traders] was a branch of the subject." This testimony is assumed to conflict with the extract of General Hazen's letter of September 12th, 1875, referred to. General Hazen testified on this point that he understood from the chairman of the committee and always believed that when he testified before the committee he did so under condition that his name as the author of that testimony would not be published ; that he understood from a prominent member of the House with whom he was corresponding that he had impressed upon Mr. Coburn the fact that his name should not be used in connection with that testimony ; that Mr. Coburn had been enjoined in that connection. General Hazen, therefore, had every reason to believe that what he might testify to before the committee would be confidential, as he was not informed that its political complexion would interfere with this idea ; but aside from this the testimony of Mr. Coburn shows that it was directly on the subject of staff matters that General Hazen was called to testify. He says, "The Committee on Military Affairs was considering the subject of the duties of commissaries. Amongst these duties there seems to be a provision of law that the commissary should supply the troops and officers with such articles as are usually supplied by post-traders, and the question arose in the committee as to whether the commissary should keep those supplies or the post-traders, and so the abuses and uses of that branch of the military service were brought before the committee. General Hazen was especially sent for in relation to that matter. Upon this, however, it was not necessary to remonstrate if the scope of the investigation was to be general, and there was no reason why General Hazen should remonstrate upon testifying on a subject he had written upon so extensively. In answer to the question on cross-examination in the Belknap trial, "Distinguish between what you said and what Belknap said," General Hazen said : "I said to him that I felt that I had been unjustly construed, that I thought there had been a misunderstanding growing out of my testimony before the committee four years ago, and that I desired that he permit me to address him fully on the subject. I went into some detail of my testimony at the time. I will not pretend to trace it now. He told me he wanted me to write

him fully and frankly, and that was the reason the letter was written. I said to him specially that my testimony before the Military Committee did not refer to himself ; but did refer to the faulty system of post-traders, and their being farmed out, and that I did not consider myself responsible for the gossip that had grown up." (Belknap trial, p. 723). This testimony of both Mr. Coburn and General Hazen shows conclusively that Hazen was not subpœnaed to testify on the subject of post-traders any more than he was to testify concerning the staff, or more especially that branch of it known as the Subsistence Department ; staff organization and administration being the only subjects upon which the House committee was at the time authorized to consider, and General Hazen attended with that understanding.

The article in the New York *Tribune* of February 15th, 1872, on the subject of post-traders and the farming out of post-traderships (Belknap trial, pp. 578, 579), while taken mainly from letters written by General Hazen and Lieut. Pratt on the subject, as testified to by Mr. Smalley, can in no sense be said to have been written by General Hazen. Mr. Smalley testified that the article was written by him, that its materials were extracted from a letter written by General Hazen and a letter written by Lieut. Pratt, not addressed to him (Smalley), the letters having been received privately and in confidence (pp. 368, 369, 370). The writing and publishing of this article cannot be charged to General Hazen, for there is no evidence tending to show that he ever gave his consent to the same, or that he was even consulted respecting it. Mr. Smalley says that he voluntarily published the article without reference to Hazen (pp. 369, 370).

In candor to this eminent tribunal, General Stanley must admit that his proposed proofs in support of the truth of his libellous writings as well as of the series of charges preferred by him against General Hazen have utterly failed him. Not even the semblance of the truth of his accusations has been shown, nor grounds to believe in the truth of them.

Before closing this brief summary of the case, it is proper to remark that one very significant feature of it appeals to the

understanding of all men. The evidence shows that for many years General Stanley has on every available occasion and opportunity made and spread broadcast these most serious and damaging accusations against General Hazen, with no pretence or claim, so far as we can ascertain, of any provocation whatever on the part of General Hazen. What can be said of such conduct ? A case can very well be imagined where a person might in a certain sense be justified and his legal responsibilities lessened if some real or imaginary injury were done him and the weakness of our nature impelled him to sin against the laws by inflicting immediate chastisement to the wrong-doer or supposed wrong-doer, but this case presents no such feature or excuse. General Stanley makes no claim or showing that he has ever been wronged in thought, word, or deed by the officer whose character he holds up to public execration and contempt. We find him then the self-constituted custodian of the standard of truthfulness, honor, and bravery in the army requiring every one of us to bend the knee before his colors, under penalty of being proclaimed a perjurer, an impostor, and coward.

ARGUMENT SUBMITTED BY MR. RICHARD T. MERRICK, COUNSEL FOR GENERAL HAZEN.

THE accused has been arraigned upon two charges :

1. "Conduct unbecoming an officer and a gentleman."
2. "Conduct to the prejudice of good order and military discipline."

It is necessary in the first instance briefly to develop the attitude of the case before considering the issues of law and fact that it involves. In the progress of the trial, counsel for the accused has made repeated efforts to embarrass the issues presented, by insisting that this is not a trial for libel, and that the rules governing such a proceeding cannot be safely resorted to for our guidance in this investigation.

Now it must be conceded that any act in violation of the rules of conduct prescribed by the common law, which would subject the party to an ignominious punishment, such as confinement in a jail, is an act appropriately and technically described as "conduct unbecoming an officer and a gentleman." It therefore follows that when an officer is charged with "conduct unbecoming an officer and a gentleman," and the specification under the charge designates and describes an act which is criminal in its character, the Court must try and determine the question whether the officer is guilty of that particular criminal act. For instance, if the act set forth in the specification were embezzlement, or bigamy, or procuring money under false pretences, or larceny, *libel*, or any other one of the large class of criminal offences known to the common law, the Court could proceed in the investigation with which it would be charged in no other way than such as would lead it to a satisfactory determination of the guilt or innocence of the party on trial in respect of the particular criminal offence described in the specification. And in such proceeding it could have no safer or better established and wiser principles for the guidance of its investigation than those estab-

lished for the direction of Courts in the trial of these offences at common law.

Now the criminal act charged in the specifications in this case is the publication of a libel, or, to speak more accurately, according to the record, the publication of several libels. For such an offence at common law, Courts in the administration of that system of jurisprudence may fine the convicted party, in the exercise of their discretion, to any amount, and may, in the exercise of the same discretion, imprison him for any definite period of time, except that the sentence shall not be imprisonment for the lifetime of the offender.

Therefore the question here presented under the first charge is whether the accused is guilty of publishing the libels set forth in the specifications, or any of them, and upon a finding upon that issue the finding of the Court in respect to the charge necessarily follows.

The defence interposed in this case is :

First—That the statements in the defamatory publications that constitute the libels are true.

Second—That the accused published those statements “in good faith and without malice, having good and substantial reasons for believing what he said.”

In stating the second ground of defence, I quote the language of the counsel of the accused, as reported on page 481 of the record.

Upon the special issues thus made under the general plea of “not guilty,” the first inquiry is: What is the proof presented by the Judge-Advocate, in the first instance, to establish the charges? And in this connection it seems that notwithstanding these defences of the truth of the publication, and excuse for publishing, even if the statements in those publications are not true, the Court is disposed to leave the accused at large under the general issue of “not guilty,” to deny that any publications were made. This privilege is apparently inconsistent with these special defences, and I question if it was ever known in any court of law that a defendant in an indictment for libel could justify on the ground of the truth of the defamatory publication, and at the same time maintain that he never published at all.

PROOF OF THE PUBLICATIONS.

Nevertheless, I take the case as I find it, and proceed to the first inquiry, namely, "the proof of the publications."

The letter set forth in specification first, under the charge of "conduct unbecoming an officer and a gentleman," is admitted by the accused to have been written by him, and by him forwarded to General Hazen at Vienna, in the Empire of Austria. This letter bears date September 6th, 1877, and is the first libel charged against the accused.

Specification second repeats the letter, and specifications third, fourth, fifth, and sixth set forth distinct and separate parts of this letter. Specification seventh sets forth a publication which it alleges appeared in the St. Paul *Pioneer Press* on or about December 1st, 1877, and which publication is substantially the letter set forth in specification first, and acknowledged, as I have stated, to have been written by the accused. But it is maintained that although the letter was written by the accused, he is guiltless of any participation in the act of its publication in the journal referred to. The specification alleges that the accused "did publish and did aid and abet in the publication" of said letter in the journal to which I have alluded.

Now before proceeding further it is necessary to inquire whether this defence is sustained by the proof. It is admitted by the accused that he wrote the letter. And it is in proof from W. W. Belknap, one of the witnesses for the defence, that the accused sent him a copy of that letter, instructing him at the same time, however, not to let it get in the press. Belknap says (p. 566) : "I heard that he (the accused) had written such a letter. He informed me so himself." He then states that he requested a copy, which was sent to him by mail, under the circumstances I have indicated. He then goes on to state, in reply to interrogatories, that he showed the letter to several parties and gave a copy of it to one or two officers of the army, and kept a copy for himself. He then goes on to say (p. 561) : "I published it in no newspaper, and how it got there I do not know. If I ever did I have forgotten." It, therefore, clearly appears that if there

was, in fact, any injunction at all about not publishing the letter in a newspaper, it was very strictly limited to newspapers only, and that Mr. Belknap felt that he was entirely at liberty to give it that kind of refined circulation which would insure its publicity through less common instrumentalities than those resorted to by ordinary men. One thing is certain, he did give it publicity, and, according to his evidence, publicity among that class of gentlemen whose good opinion was most valued by General Hazen, and whose esteem and respect was most necessary for him in the performance of his duties as an officer of the United States Army. Nor is it at all surprising that this interesting paper, thus put into circulation by the conjoined efforts of the accused as its composer, and Belknap as its exhibitor, should find its way into the columns of any enterprising journal: and the accused therefore, in his letter to General Sherman presented to the Court at the commencement of this case, whilst denying that he actually caused the letter to be published in the St. Paul *Pioneer Press*, admits his responsibility for its appearance there because of his own carelessness.

But there is another and yet more conclusive piece of evidence connecting the accused with this publication, placing his complicity in the transaction beyond the reach of question. In his conversation with F. L. Hosmer, when he was getting up the libel, which appeared in the New York *Times* on March 14th, 1879, and which constitutes the subject of the twelfth specification under the first charge, and the third specification under the second charge, he made the following statement, referring to General Hazen and certain of his friends and legal adviser in Washington City: "I don't know what progress they're making; but I do know what they're afraid of; that is, that if his name ever comes before the United States Senate he will meet charges of perjury and cowardice which I have made to his face, to the newspapers, and in official statements."

This constitutes part of the third libel, which I shall consider hereafter more generally. I now refer to it only for the purpose of proving the publication of the second libel. Mr. Hosmer stated that the words I have just read were Gen-

eral Stanley's words, and being interrogated by the accused, testified as follows :

Q. Are you certain whether I said charges have been made to the newspapers or *in* the newspapers ?

A. I did not notice that particular point. I wrote it down exactly as you gave it to me, *word for word*, very slowly.

Now whether the reporter in taking down the words of the accused mistook the word *in* for *to*, and should have written *in* the newspapers instead of *to* the newspapers, is quite immaterial. He could not, writing down "exactly" and "word for word" and "very slowly," have entirely mistaken what was said, so far as to make the sentence conform to the apparent theory the accused seemed to suggest in his interrogatory. For the sentence was a plain declaration of three things that the accused had done, namely : I have made certain charges—*first*, to his face ; *second*, to the newspapers ; *third*, in official statements.

NARROWING DOWN THE FIELD OF PROOFS.

Now, as far as this trial has developed, there has been no other publication calumniating General Hazen coming from the accused and appearing in any public journal in the country, except that mentioned in the specification as appearing in the St. Paul *Pioneer Press*. And if what the accused said to Mr. Hosmer, that he had made charges of cowardice and perjury to the public press, was true, and not braggadocio and abuse, then the press to which he referred was the identical journal designated in specification seven. If there had been any other journal of which he knew that would have made good his word to Hosmer, why did not he introduce it on the trial?—for as it would not have answered the description of the paper given in the specification, it could have done him no harm, but would, on the contrary, have done him great good by extricating him from the dilemma in which he has placed himself.

Specifications the eighth, ninth, and tenth, respectively, set forth as having been published in the St. Paul *Pioneer Press* the several different portions of the letter set out in full

in specification seventh, and in each charge that the accused did "aid and abet in the publication." Specification eleven sets out the entire letter, and charges that the accused furnished the same for publication in the St. Paul *Pioneer Press*.

Specification twelfth contains the third of the libels constituting the offence of the accused, and sets forth that he did "cause and allow to be published in . . . the New York *Times* certain false and malicious statements and imputations concerning and against Colonel William B. Hazen," etc., and thereupon sets forth the libel in full. The proof of the participation of the accused in the publication of this libel has already been partly considered in discussing the testimony of F. L. Hosmer, with a view to establishing the publication of the second of the series of libels.

HOW THE CHARGES WERE MADE.

F. L. Hosmer testifies that he was on March 14th, 1879, a reporter for the New York *Times*; that he called upon the accused in consequence of something he had seen in one of the papers in reference to General Hazen, or General Hazen and himself, to interview him for the purpose of preparing an article for the journal on which he was employed; that the accused knew what his occupation was, and was informed of the purpose of his visit; and that he was in fact so informed is apparent from an expression in the article which forms the subject of the specification I am now considering. The article states that General Stanley, when interrogated by the reporter, said that as far as the general public is concerned he thought General Hazen had kept it pretty well informed, and it was hardly necessary for him to say anything. This expression is in quotation marks in the article referred to, and Hosmer testified that everything in the article that was put in quotation marks was General Stanley's own and exact language, written down at the time "*word for word*."

General Stanley then, having said that the public was "pretty well informed"—so well that it was "hardly" necessary for him to say anything—proceeds to say to that public what he

does think it necessary he should say ; and thereupon follows matter, if possible, more defamatory than in either of the two preceding libels. Hosmer further states in his testimony that after taking down what the accused said in longhand, and "*word for word*," he read it over to him, and that it was approved by him as correct. And he further says that subsequent to the publication the accused explained to him that the intimation therein that he had commanded a corps at Pickett's Mills was a mistake, and the witness, when interrogated by the accused, stated that they had not read the article in the same way, and agreed that in that particular there was a mistake. This, however, being the only correction made by the accused, is necessarily an admission of everything not correct. The only question, therefore, remaining in reference to the complicity of the accused in the publication of this libel is whether the facts I have stated constitute such complicity.

This question is hardly worthy the dignity of argument. That the defamatory statements that constitute the substance of the article were from the mouth of the accused cannot be questioned.

The fact that they were taken down as he uttered them is undisputed.

The fact that they were read over to him, that their accuracy might be tested, is likewise undisputed.

Neither is it disputed that he knew they were designed for publication, and for publication in that particular journal in which they appeared.

And that after their appearance he complained of one immaterial error, and thus ratified and affirmed the accuracy of all the rest of the article.

LIBELLOUS NATURE OF THE CHARGES.

I might refer upon this subject to the rules of law as laid down in adjudicated cases (Section 540, Starkey on Slander and Libel), and I might show the difference in the rule which holds a defendant in a civil case responsible for the publication of a libel by procuration, and where he is held responsible for a publication under similar circumstances in a criminal case.

But surely any officer of the United States Army would blush at the thought of asserting for an instant that the accused is not, under the facts I have detailed, responsible for the publication of the libel in question, and I should insult any cultivated understanding by debating the question.

Having thus shown that the publications were made, the next question is whether the matter contained in them constitutes what is known to the law as libellous matter. This question is answered by reading the publications. And here it may be necessary to analyze them and briefly comment on their injurious and defamatory charges.

In substance, the first and the second of the series of libels are the same. The accused says that he has seen the decision of the President upon certain charges he has preferred against General Hazen, that "the service would not be conserved by convening a general court-martial to try you (Hazen) at this time."

He then proceeds to say that he is not disappointed, and writes as follows :

" You know just as well as I do that your trial could only have resulted in your conviction, and you already stand convicted before those who heard you testify."

During the progress of the trial it seems to have been regarded that these expressions were obnoxious to the law only in so far as they were libellous upon General Hazen ; but when looked at from a military point of view, they deserve severer censure and involve greater criminality for another reason. They are an open assault upon the Executive of the United States for the manner in which he has discharged his official duty as the Commander-in-Chief of the Army. The accused had thought proper, in the exercise of what is conceded to be the privilege of every officer when acting in "good faith" and under an honest conviction, to prefer charges against one of his brother officers. These charges had been duly laid before the proper military authorities, and finally reached the President of the United States. The Commander-in-Chief had given them that consideration which his duty to the country and the army required, and it is to be presumed that he conscientiously performed in the premises the obliga-

tion imposed upon him by the Constitution of the United States. Having in the performance of that duty determined that a court-martial should not be convened for their trial, the officer by whom they were preferred publishes to the world that he is "not disappointed" at the fate they have met, and at the same time also publishes to the world his solemn assurances of the guilt of the party against whom the charges were directed, and further says in his publication that multitudes besides himself knew of this guilt. If he does not mean to arraign the President for malversation in office, what does he mean? Why is he not disappointed? Why does he continue to reassert guilt? Why does he leave the recognized channel of official communication and enter the arena of public debate before the people? What other object can he contemplate except to create the impression that the object of his vindictive malice has not been criminally arraigned to answer for his guilt by the unlawful, unconstitutional, and criminal interposition of the Commander-in-Chief of the Army.

AN OUTLET FOR VINDICTIVE MALICE.

But whether this publication, in the aspect in which I am now considering it, be regarded as libellous upon the Commander-in-Chief of the Army or not, one conclusion must follow from the subsequent parts of this letter, when taken in connection with that part I have been discussing, and that conclusion is that the accused, having exhausted all legitimate means of attacking General Hazen, derived from the failure of his designs new vigor and intensity to his vindictive malice, and determined that since he could not ruin his enemy by law he would destroy his character by defamatory libels. If the officers of the Army are willing to assert in solemn adjudication that conduct such as this is "becoming an officer and a gentleman," it is to be hoped that civilians will never seek for enlightened rules to restrain the latter class in the code that governs the former.

The latter clause of the letter is as follows:

"I now give you fair warning that I am fully informed of your disgraceful conduct at Shiloh, and when the proper oc-

casion offers will use the information to stop your career of imposture."

The specifications which follow the first, subdivide this paragraph of the letter, and by innuendo allege that "disgraceful" conduct was intended to signify cowardice, and that the words "career of imposture" were intended to signify that General Hazen, to whom they referred, was an impostor.

Some question arose in the progress of the trial in reference to the use in certain of these specifications of words of technical signification. For instance, in the third, after averring that the accusation therein contained is "unfounded, false, and malicious," the specification continues, "and was wickedly *devised* by the said Stanley." And it was asserted by the defence that it was only necessary to be shown, on behalf of the accused, that he did not *devise* the charge, thereby meaning that he did not originate it, and that he was not the author of it, and consequently that any accusation against General Hazen of the character contained in the libel of the defendant, and which might have been at some time rumored about among some people, would be a sufficient defence under which to protect the accused. Such is by no means a just construction of the language of the specification. The accused himself devised the libel, and rumor is no justification; but this I shall have occasion to consider hereafter. My design now is simply to say that whatever rumors may have been offered in proof as to acts of General Hazen, there was no statement or rumor whatever that his conduct at Shiloh had ever been pronounced by anybody as "disgraceful." General McCook and other officers testifying for the accused, stated that they had seen General Hazen on the day of the battle, absent from his brigade. But the distinguished officer I have mentioned stated that he had never pronounced an opinion upon his conduct, nor was there one, of all the witnesses summoned by the defence to bear testimony to this circumstance, who ventured to say that he had characterized the conduct of General Hazen by any such term as "disgraceful," or by any other term derogatory to his character as a "soldier and a gentleman." It was left for the accused, who was not at the battle, to "devise" the judgment he pronounced when he accused General

Hazen of "disgraceful conduct," a judgment which the testimony in this case has shown to be so entirely erroneous that it can be accounted for only upon the ground of an unwise if not an insane vindictiveness.

As to the charge that Hazen was an impostor, that *this* was devised by the accused there can be no question.

MISSTATEMENTS IN ANOTHER CHARGE.

This analysis of the libel contained in the first specification is applicable to the charge contained in the eleventh specification, namely, the publication of the letter in the *St. Paul Pioneer Press*; and I, therefore, pass to the libel contained in the twelfth specification, and which will enlighten us as to that contained in both the first and the eleventh. In this libel the accused states as follows, referring to General Hazen and his friends at Washington :

"I don't know what progress they are making, but I do know what they are afraid of : that is, that if his name ever comes before the United States Senate he will meet charges of perjury and cowardice which I have made to his face, to the newspapers, and in official statements."

The libel further says : "General Stanley asserts that General Hazen was reported to him for cowardice at the battle of Pickett's Mills and other places. At that time General Stanley commanded the Fourth Corps of the Army of the Cumberland, while General Hazen was in command of a brigade in the third division of that corps."

I have already called attention to the fact that the statement that General Stanley commanded a corps at the battle of Pickett's Mills was an error of which he complained to the reporter after the article appeared, and which was explained in court by him.

It is proper to remark in this connection, however, that the accused did command the Fourth Corps of the Army of the Cumberland from July, 1864, till the summer of 1865, and that during part of that time General Hazen was an officer serving in that corps and under the accused, in order to give application to the expression I have quoted from the libel, that Hazen was reported to the accused for cowardice.

It is also proper to remark in this connection that F. L. Hosmer in his testimony says as follows : " I simply meant that he (Hazen) was reported to him (Stanley), and that he could take no action in the premises or he would have done so. I did not mean officially reported." But it is quite immaterial whether the expression in the libel meant, or was intended to mean, that the report that came to the accused was official or unofficial. He has published as a fact that General Hazen was reported to him for cowardice at Pickett's Mills and other places. Now, whether this report was official or unofficial, it must have been made by some individual if made at all. But further than this there must have been more than one individual in the general transactions referred to in the libel, for the report was not only as to conduct at Pickett's Mills, and not only as to some one other place, but as to *other places*. Who made these reports to the accused ? Where is the evidence ? He certainly knows who the individuals are who made the reports to him, if any such exist. He has had ample time to get his testimony. The power of the Government, reaching on all sides to the extreme limits of the Republic, has been at his command to bring before this court any witness he might desire to call. Where are the individuals who bore him the reports he alleges he has received ? That he has published as a fact that reports thus injurious and damaging to General Hazen were made to him is no longer open to question. The inquiry now is whether that statement is true or false. As to this narrow question there is no room for the defence that he believed it to be true, and had grounds for such belief. He knows whether it is true or not, and there are others, according to his own statement, who must know the same thing. Where are they ? Why has he not called them here ? Why has he willingly rested under the imputation that the statement was untrue, unless he knew that it was untrue ?

RECAPITULATION OF THE LIBELS.

This analysis of the several libels develops the following as the charges against General Hazen that have been published by the accused :

First. Perjury as a witness in the trial of W. W. Belknap before the Senate of the United States.

Second. Cowardice at Shiloh.

Third. That he is an impostor.

Fourth. That the accused has charged him to his face, in the newspapers, and in official communications, with perjury and cowardice.

Fifth. That he was reported to the accused for cowardice at Pickett's Mills and other places.

Graver and more serious accusations could not be brought against an officer of the army, and the publication of such charges, unless justified, is one of the highest crimes known in any civilized community, and places the accuser and the accused in the attitude of meriting the severest penalty according to the determination which may be reached as to whether the charges are true or false.

At common law the criminal offense is complete by the simple publication of charges of so grave a nature, and the truth is not allowed to be given in evidence as a protection of the accused. But in this proceeding, as I understand it, it was designed that the accused should have the protection of the truth to its fullest extent, if he could establish it in his vindication.

He has availed himself of that defence, and accompanied it with such expressions as render the conclusion inevitable that his publications and conduct were instigated by the most vindictive malice, unless the Court should believe that the evidence adduced clearly and distinctly establishes the guilt of General Hazen as to the several matters charged against him by General Stanley.

The accused in his letter to General Sherman, on file in the records of this case, in speaking of the libel set forth in the first specification, says: "I further avow that all the substance-matter in the letter is true, and therefore not libellous.

. . . I confidently expect to bring out such evidence in my defence as will, if it does not wholly debar Colonel Hazen from associating with gentlemen, at least close up effectively all pretensions on his part to honors or promotions in the Army."

Now what is the proof offered? The testimony of General Hazen given on the impeachment of W. W. Belknap has been presented by the defence to the Court as sustaining and justifying the charge of perjury. In the specifications under the charges preferred by the accused against General Hazen, all of which relate to the subject of the trial of Belknap, the testimony is unnaturally torn one part from another, and so collated as to give an incorrect view of what the evidence really was. When read together the evidence of General Hazen will be found entirely consistent in every part, and entirely in harmony with the confidential letter he addressed to General Belknap from Fort Buford, September 12th, 1875. According to the testimony of Mr. Coburn and General Hazen, the latter was summoned to Washington in 1872 to testify in regard to matters relating to the staff of the Army, and he was examined as to post-traderships in connection with the duties of the Commissary Department (p. 195). Previous to that time General Hazen had a correspondence with General Garfield, and inclosed to him a communication received from an officer at Fort Sill disclosing certain abuses in the post-tradership system. This letter from General Hazen, and its inclosure, General Garfield handed to Mr. Coburn, the then chairman of the Committee on Military Affairs in the House, and it was agreed between them that General Hazen's name should not be mentioned as volunteering statements about the abuses of post-traders. (See Coburn's testimony, 635 and 636.)

THE COMPACT ABOUT SECRECY BEFORE THE MILITARY COMMITTEE.

General Hazen came on to Washington in obedience to the summons of the committee, having been informed of this arrangement between Garfield and Coburn that his name should not be disclosed as giving information upon the subject referred to. General Hazen states in his evidence, under oath, on this trial, that in conversation with Mr. Coburn, before testifying, he spoke of not having his name disclosed in connection with this matter. Mr. Coburn has no recollection of that conversation, but thinks it possible it may have taken place, and it is apparent, from the fact of the arrangement

between Mr. Coburn and Mr. Garfield to the same effect, that such a conversation would take place in the ordinary course of events. General Hazen very naturally as an officer of the Army did not wish to involve himself in a difficulty with the Secretary of War, although he did not at that time certainly know how deep and virtuous was the interest of that high functionary in the delicate subject with which he was dealing. Being thus ignorant he was not conscious of how wise his course had been in not making a report on the subject directly to the Secretary of War in person. And it is to such personal report that he refers in his letter of September, 1875, when he says, "I had not reported the matter to you." His position is well explained by himself in the second paragraph of the letter referred to (page 233, *Congressional Record*, offered in evidence). He says as follows : " Seeing that we were defeated, and the Army again encumbered with the old system, which is nothing less than a system of leeches applied to the pockets of the Army (although personally the present sutlers are not objectionable men), and that the objections of the Commissary Department would block any action in the matter and defeat any attempt through the Army itself looking toward correction, I endeavored to call the attention of Congress to the subject, through my old friend and schoolmate, General Garfield. I naturally gave the worst instances of the workings of the law I knew of, and these were instances of farming out licenses at heavy rates, which were, of course, a tax to that amount upon the garrisons."

E. V. Smalley confirms what General Hazen states in this letter as to the manner in which he obtained the information that formed the basis of his article published in *The Tribune* in 1872. Although Hazen was ignorant of the Secretary's personal interest in farming out licenses, it was perfectly natural, after the publication in *The Tribune*, that the Secretary should feel indignant, as he says he did, and that this indignation should grow and develop in a manner he is utterly unable to explain in his testimony.

The gravamen of the charge against General Hazen is that his testimony, as given, is in conflict with the letter referred to ; but a close analysis of the two will show plainly that no

such conflict exists. It is also alleged that his statement to the effect that the Commissary Department opposed and obstructed the operation of the law of 1866, providing that that department should furnish soldiers with a certain class of stores which had been theretofore provided by sutlers, was not well founded. But one important and controlling fact upon that subject stands out to view—viz., that while the Inspector-General of the Army, who by the law was required to furnish the list of stores to be provided by the Commissary Department, has invariably and faithfully performed his duty in that regard, the law has remained practically unexecuted. It cannot be doubted for a moment but that a co-operation with the Inspector-General of the Army on the part of the Commissary Department would have accomplished the faithful execution of the law. Independent of this fact, the official records and evidence before the court show that General Hazen was entirely right in his belief and in his expressions of that belief.

GENERAL HAZEN AT SHILOH.

Much the greater portion of the large mass of evidence before the court presented by the accused relates to the conduct of General Hazen at the battle of Shiloh. It appears from the testimony of several witnesses that General Hazen was at one period of the day absent from his command at that battle, and at a certain time, not more definitely fixed by any of those witnesses than about noon, was seen at Pittsburg Landing. They also represent that this subject was commented upon or spoken of at the time, but, as I have before said, there is not one of them who undertook to condemn General Hazen for the act or testified that others had condemned him. Further than this single fact the accused has offered no evidence whatever to sustain or justify his libel upon General Hazen in which he has charged him with "disgraceful" conduct at that battle.

How has the Judge Advocate met this testimony?

He has brought before the court those officers of General Hazen's brigade whose military duty made it necessary that they should be with him, and other distinguished officers serv-

ing in his command whose undoubted courage and brave achievements at that battle, and throughout the war, have secured to them a lasting reputation in the history of their country. General Emerson Opdycke testifies that with the dawn of the morning General Hazen formed his brigade, led it on as the advance of Nelson's division, and therefore as the advance of the army, on that famous field, pushing the enemy before it, until, finally drawn up in one extended line of battle, General Hazen gave the order to charge, went forward with his men wherever resistance was to be encountered or danger invited the soldier. Finally, driven back by an overwhelming force, they retreated, whilst General Hazen at every step was endeavoring to rally his men. The brigade was broken and scattered in the thickly wooded country, dense with under-growth, and the General and Opdycke were both lost. They parted at one o'clock. Opdycke rejoined the colors of the 41st Ohio about an hour afterward, about which had rallied a few of his scattered regiment.

Robert L. Kimberly, Acting Assistant Adjutant-General, bears testimony to the same facts with Opdycke up to the period when he was wounded in the advance, which he fixes at about one o'clock. W. M. Beebe, an aide to General Hazen, testifies that Hazen called his brigade to arms with the first dawn of the light, formed them in two lines for the advance, moved forward on the enemy, and, after some severe fighting, ordered a charge upon the Rebel lines. Generals Buell and Nelson were at the time this order was given immediately in the rear of the brigade, and some confusion in the 6th Kentucky Regiment having occurred, Captain Wright, of General Buell's staff, with General Hazen, rode to the front, organized and rallied the men, and General Hazen charged with them upon the enemy. During the charge they drove the enemy from his guns, passed beyond his battery, met his second line, when from front and either flank a deadly fire was poured upon the brigade, and, unsupported and encountering overwhelming numbers, they fell back scattered and disordered. General Hazen was there seen with the men who had advanced the furthest, and it is proper to remark here that this point was the furthest in the direction of the enemy's lines

that had been reached by any of the Federal troops at this time.

He accompanied General Hazen in the retreat, and after being parted from the command they became separated from each other by the thick undergrowth. He again saw General Hazen about four o'clock, when he was in command of his brigade. The 41st Ohio and 6th Kentucky were badly broken and scattered, but a comparatively small portion of the men had gathered before nightfall, and they were coming in throughout the night.

Captain Charles D. Gaylord, one the staff of General Hazen, testified to the forming of the brigade in the morning, its advance, its encounters, its final charge, and bears witness that all the time up to the very last moment when it had passed beyond the enemy's batteries and been checked by his second line and an enfilading fire General Hazen was in his place cheering on his soldiers, and performing the duties of a brave and gallant man ; and that in the retreat he was endeavoring to rally them for another attack, inducing them to stand wherever he could, although they were pursued by a deadly fire. In this retreat, having occasion to dismount, he lost sight of his general. He saw him next about four o'clock of that same afternoon, probably not more than two hours and a half after he had parted with him, when he was again with that small portion of the brigade that had rallied, and he was then in command of it.

Lieutenant Gross, of the 9th Indiana, says that he saw General Hazen at the furthest point reached in the charge ; that his regiment went in with 450 men, and such was the disaster and disorganization consequent upon their fearful encounter that there was not left more than from 80 to 125 ; that the 41st Ohio and the 6th Kentucky were badly broken and scattered ; that the men continued to join the brigade during the night, and even the next morning.

These witnesses all concur in the statement that the charge was some time after twelve o'clock, the entire previous part of the day having been occupied in fighting up to the point where this final dash was made. The charge lasted probably thirty minutes or more. The brigade had been decimated.

With the final charge, its work for that day was done. That work had been well and bravely done, under brave and gallant leadership, and he who would soil the fair fame won on that bloody field deserves the reprobation of every officer in the service of the country. I will not speak of General Hazen's own testimony accounting for his absence. The testimony of others establishes his gallantry on that day so clearly that it raises the necessary presumption that any absence when the fight was done was the result of inevitable accident. His own testimony accounting for this accident was so direct, so calm and modest, that any discussion would only be calculated to lessen its legitimate and proper force.

What next shall I discuss to meet this rambling attack of vindictive malice upon a distinguished soldier?

THE EVIDENCE ABOUT PICKETT'S MILLS.

Pickett's Mills follows Shiloh naturally in the order of the charges. It was at that battle also that General Hazen is alleged to have acted in a cowardly manner.

Robert L. Kimberly, who was his adjutant at Shiloh, was the Lieutenant-Colonel of the 41st Ohio at Pickett's Mills. He testifies that General Hazen was in his proper place. Indeed there is no testimony to the contrary worthy of consideration in regard to that battle.

W. M. Beebe, who was on the staff of General Hazen at Pickett's Mills, as he had been at Shiloh, testifies that the brigade consisted of nine regiments; that during the entire day General Hazen was in his place at a distance of fifty to seventy-five yards to the rear, where he could see the operations in the field. The brigade was driven back; General Hazen accompanied and re-formed it. He further says he was with the General nearly the entire day, and was carrying orders from him to the right of the brigade, and was never longer absent from him than was necessary to deliver the order and return to his post.

At Mission Ridge, Robert L. Kimberly, the Adjutant-General at Shiloh, was Colonel of the 41st Ohio. He testifies that at the signal of six guns the whole line advanced to the foot of

the ridge and attacked the rifle pits of the enemy, rested for a few moments in the shelter of the abandoned pits, and then, under the order of Hazen, shouted repeatedly along the line, scaled the ridge. It is proper here to remark that General Hazen, in his letter to Lossing the historian, gives to his brigade the credit of that dashing movement, and says in substance that his order to advance was only in response to that enthusiasm which had impelled them forward before the order was given. Kimberly says that this brigade was the first to reach the crest of the ridge, where they found a number of guns from which they drove the enemy. The enemy remained at the guns until the brigade got within fifty paces of his breastworks, and finding one of the guns still loaded, it was trained to point along the crest of the ridge, and fired by some of Hazen's command. Hazen was there present with the first that reached the guns. Some question has arisen as to who captured those particular guns. If Colonel Kimberly is to be believed (and no one questions his veracity or his honor), the men of Hazen's regiment found the enemy in their possession and drove him away ; consequently if he had been driven away before he must have regained his lost possession—hardly a probable supposition. Overwhelming testimony in confirmation of Kimberly's statement would have been offered had not the Court, deeming the evidence on this and kindred subjects amply sufficient, declined to hear further testimony.

THE STONE RIVER MONUMENT.

The most extraordinary feature of this case is the claim set up by the accused in reference to the location of the monument erected at Stone River, to the memory of the soldiers of Hazen's brigade, on the spot where they fell. The evidence upon this subject was introduced by the accused under the assertion that he would show a fact which would justify him for having, in the libels complained of, made the charge against General Hazen of being an impostor. The counsel of the accused in this first instance stated the object of the evidence, but the accused, apparently not satisfied with so modest a presentation of his claim, rose in court, and said (p. 251) : "No, let me

state it. I am accused, and one of the serious accusations against me is of accusing General Hazen of being an impostor. There are impostors for a month and there are impostors whose impositions will last to all eternity. The man who builds a monument to commemorate a falsehood is the greatest impostor the world can conceive of. We wish to show why this monument was raised, and we want to show the imposture of it. The inscription to which we want to call attention is this on the east side : ‘Erected, 1863, upon the ground where they fell, by their comrades.’” I have quoted this language of the accused in order that he might have the full benefit of the position he has assumed, and at the same time that he might not escape the responsibility of the attitude in which he has placed himself. A man who erects a monument to perpetuate a falsehood may be, according to the definition of the accused, an impostor. But he that would attempt to tear down by a libel upon both the dead and the living that which has been erected by the survivors a memorial to perpetuate the glory of their comrades who fell in battle is worse than an “impostor.”

The accused has presented the issue plainly, and he has attempted to sustain his assertion by the testimony of General Wood that the monument is not erected upon the exact spot where the dead of Hazen’s brigade fell on that bloody day ; but all that this witness could say who was there upon the field of battle, was, that he did not believe that the monument was on the spot occupied by the brigade in question, although he did not positively know that it was not. Subsequent testimony plainly shows that General Wood, brave and efficient officer as he may be, was somewhat confused in his ideas as to the location of troops and the happening of transactions on that day. Colonel Kimberly, who at Stone River occupied the same position that he did at Shiloh, of Adjutant-General to General Hazen, testifies that the monument is on the identical ground occupied by Hazen’s brigade. Captain Beebe, who was on General Hazen’s staff, testifies emphatically to the same effect. He says that early in the morning General Hazen ordered him to ride in the direction from which there came the sound of heavy firing, and to as-

certain the cause and to report to him. When he returned and reported he found that the brigade had moved across the turnpike, and was resting between the turnpike and the railroad, with its right on the turnpike and its left on the railroad ; that it continued to occupy that line between the turnpike and the railroad until the enemy made his appearance upon the flank. Change of front to rear on the left subdivision was ordered, which carried the brigade facing at right angles to its former position and behind the railroad embankment. At that point he was wounded. "The monument is built," he continues, "on the ground occupied by the brigade at that time, and in that position between the turnpike and the railroad where the monument stands the brigade lost the most of its men." But if any further evidence were needed to establish the truth of the inscription upon this monument erected to commemorate the deeds of the gallant dead, and thereby stimulate the living to rival their glory, it is furnished in the testimony of that accomplished soldier and highly distinguished citizen, General John M. Palmer. He says that observing the gallant fight of Hazen's brigade, he rode up to them, and during a lull in the battle thanked the 41st Ohio for their conduct. "That regiment," he says, "was under the more immediate supervision of General Hazen. They were holding the most important position, the maintenance of which was necessary to the preservation of the army." General Palmer says, "The killed and wounded were strewn thickly around. I recollect very well seeing Beebe, of Hazen's staff, wounded near the railroad ;" and he continues, "The point of which I speak was between the railroad and the pike. I cannot speak accurately as to the location of the monument, but this I know, it is nearer the position occupied by Hazen's brigde than to the position occupied by any other troops I saw on that field. It is just in front, I think, of where the line formed during the real struggle."

How then stands the issue the accused has made as to the truth or falsehood of the inscription on that monument ?

Now the evidence of the falsity of that inscription is the only evidence he has offered to justify or excuse the libel he

has published upon his brother solider, denouncing him to the world as an impostor.

The shelter of the truth under which the accused has sought protection for the libels he has published having been torn down and demolished by even the limited amount of evidence allowed to be introduced to rebut his case, his counsel seek to defend him upon the ground, to use his own language, that if he "in good faith and without malice made these charges, having good and substantial reason for believing what he said" (p. 481), then the accused is entitled to acquittal, although the charges may be false.

THE FUTILE PLEA OF GOOD FAITH.

In regard to the defence just indicated, it is proper to remark that no evidence whatever has been offered showing that any statement made by any person derogatory to General Hazen has ever reached the ears of the accused. And it seems a mockery of the term, in view of the testimony in the case, even to aver a pretence that he acted "in good faith." Good faith don't mean whimsical belief ; it don't mean suspicion, colored by malice ; it means the honest conviction of an honest mind, honestly desiring to know the truth. Now, before the accused published his first libel charging General Hazen with cowardice at Shiloh, he had before him the written statement of General Emerson Opdycke, as honorable a man as ever lived, informing him that he, Opdycke, of his own personal knowledge, knew that Hazen's conduct at Shiloh was that of a gallant solider, and was without reproach. Why did he not give credit to this statement, and if he did not choose to give credit to it, why hasn't he out of all the army of the United States, that survived that day, brought some one here to prove that he had told him a different story, and impressed upon his mind a conviction that Opdycke's statement was not true ?

And as I have asked before, I ask again, if anybody ever reported Hazen to him officially or otherwise for cowardice at Pickett's Mills or anywhere else, why has he not brought that man here to testify ? And why has not he consulted the

records of the department in which are the reports of commanding and subordinate officers alike, out of which are made the history of the country? And if he has searched these records and found anything in them to justify the belief he has expressed and vindicate his claim to the "good faith" asserted for him, why has he not brought that record here and produced it before this Court? When those records were offered by the Judge-Advocate and their admissibility claimed upon the ground that it was testimony "accessible to the accused," and that he ought to have examined them, his counsel promptly replied that he had examined them, and proposed to show that those records were not correct. Can the plea of "good faith" so extend itself as to meet a case like this?

But, says the counsel of the accused, laying down the law, and I accept it, "there must not only be good faith in the accused, but he must have had good and substantial reasons to believe the truth of the charges that he made." Had he good grounds to believe that this distinguished officer, who had gone through the war, and of whose record this Court will take judicial cognizance as it is written in the history of the country, had really been guilty of cowardice at Shiloh, Pickett's Mills, and other places? Was he deaf to the honest fame that the object of his animosity had achieved at Chattanooga, Chickamauga, in East Tennessee, and the Atlanta campaign, at Jonesboro, McAllisters and Bentonville, or did his undisciplined spirit, filled with malignity, turn a deaf ear to all that was good and kindly and brave and generous, but catch with the sensitive hearing of animosity every breath of evil, however putrid the atmosphere in which it stirred? As an essential element of his vindication his counsel has stated that there must not only be "good faith" in him, and that he must not only have had good and substantial reasons for believing that the charges he made were true, but that he must also have been without malice in making them. Unfortunately for him, the case furnishes conclusive evidence of the most vindictive malice.

GENERAL STANLEY'S PERSISTENT MALICE.

It is a settled principle of law that you may find malice in the libel itself, and we know that modes of expression, and especially needless repetitions of defamatory charges, compel us to the conviction that vindictiveness and animosity stimulate the accused. The accused in this case, in September of 1877, addresses a libellous communication to General Hazen at Vienna. This alone, according to the criminal law, was sufficient publication. Shortly afterwards he exhibits it to General Belknap and gives him a copy, which is industriously circulated. In the following December this same communication very slightly modified appears in a public journal of this country. In March of the present year he publishes by procurement similar defamatory statements in reference to General Hazen in one of the leading journals of the United States. Why was this? What was his motive? Can any one acquainted with human nature assign any other cause for it than the vicious influence of those sentiments which men call vindictiveness and malice? But the extraneous evidence strengthens the conclusion that these were the sentiments by which he was impelled. In his conversation with General McCook in this city some years since, he speaks of General Hazen in terms of severity. In another conversation with General Wood and Colonel Steele at the Centennial, in 1876, he speaks of General Hazen in the most defamatory and abusive terms, and declares it to be his purpose to arrest his career.

THE HONOR OF THE ARMY IN QUESTION.

The counsel for the accused has during the progress of the trial repeatedly urged upon the Court that this case should in no way be regarded as one in which, by the judgment to be pronounced, General Hazen should obtain any vindication of his injured character. I am not very familiar with military jurisprudence, but it seems to me that General Hazen's character is not only at issue in this case, but that to a greater or less extent the character of the Army of the United States and

of its system of jurisprudence are also at issue, as well as the guilt or innocence of the accused. If there is any class of men in our country with whom principles of honor should be regarded as more obligatory than mandates of law, it is that class known as the Army of the United States: if there is any class of men among whom unfounded defamatory and injurious accusations can work mischief to individuals and detriment to the public service, it is the Army of the United States. Within itself, according to the order of priority, ready obedience is essential and personal respect is necessary to a cheerful subordination. In its relation to the private citizen its officers are seldom permitted to reside sufficiently long in any one locality to establish upon a solid basis an individual and personal character among the people. They are accepted everywhere as gentlemen by reason of their position in the service of their country. Whether, therefore, we regard the officers of the army in their relations to one another, or in their relations to civilians, you cannot fail to appreciate that disastrous consequences must follow unjust aspersions, and consequently you cannot hesitate to recognize that the dignity of your service may sometimes require severe though painful remedies.

CONCLUSION.

The learned counsel for the accused seems to have some theory, which I confess I am unable to understand, as to the right of officers of the army to be exempt from those rules of presumptive evidence which are applied to the acts of ordinary men. His own ideas on the subject are apparently not perfectly clear. He maintains that every officer must be presumed to be a gentleman, therefore that whatever he does must be presumed to be right. This is the substance of his theory, and supposing, in deference to him, there may be some ground for the rule he has laid down, how does it apply to a case between two persons both of whom are officers and in which one of them must necessarily be wrong? The rule must operate equally and alike as to all who are members of the exceptional class. If, therefore, a charge should be made against an officer that he published an accusation of in-

famous conduct against another officer, the presumption would be that the charge of having made such a publication was false. But if it should be established by the evidence that he had made such a publication, then the presumption would be that the accusation was false. It will be thus seen that the rule of presumption would operate equally in favor of the one and the other, according to their respective relations to the acts done. The extraordinary paper signed by the accused and read by his counsel as his defence, confirms every word that I have said in reference to his deep, vindictive, and aggressive malice. In that paper he not only reaffirms his conviction of the truth of the defamatory charges he has heretofore made against General Hazen, but apparently defies the Court to convict him, notwithstanding the evidence adduced, and announces his purpose to act toward any other officer whose character and conduct do not meet his notions of what they ought to be in the same manner in which he has acted toward General Hazen. If this Court thinks he should go forth to purify and purge the Army of the United States in the exercise of undisciplined passion, he certainly should be allowed a charter for that purpose in a judgment of acquittal.

But this paper in its relation to the case contains a yet more serious statement, and solemnly asserts that there is now on file in the department at Washington an application by General Hazen that he should be appointed Quartermaster-General. Is it in accordance with the proprieties of this trial and consistent with the dignity of this Court that such a statement should be made at this stage of the proceedings? If such an application is on file in Washington, why did not the accused produce a certified copy of it as evidence in the case? Why did he wait to make such an accusation until presenting his argument in defence, when, to the reason of any thinking man, it can have no other effect than to excite the belief that he is endeavoring to delude the Court by the assertion of that which he did not dare to assert under oath, and which he knew he could not establish by proof? This extraordinary statement can only be accounted for on the ground that his vindictiveness has entirely overcome his prudence and subjugated his understanding. But something further must be said,

as due to public justice and to honor and truth. I am authorized to state on behalf of General Hazen that no such application has ever been made or filed by him or by his authority or with his connivance, consent, or knowledge, and, so far as he knows, the statement that any such application is now or ever was on file in the department at Washington or elsewhere, is unfounded and untrue.

Respectfully asking from the Court that it will seriously consider how far officers of the United States Army are to be protected and justified, under our system of military jurisprudence, in adopting the methods pursued by General Stanley in libelling and defaming one another, and whether these methods are in harmony with the principles of right, justice, and honor that distinguish the profession of the soldier, I submit the case.





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